Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-376

DANIEL A. GRIPPE,

Petitioner,

V.

LOUIS J. FRANK,

COMMISSIONER OF POLICE, POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK.

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

Opinion Below

The citation of the New York State Court of Appeals is reported at 36 N.Y. 2d 713 (1975), which cited 46 A.D. 2d 848, (362 N.Y.S. 2d 1010 (2nd Dept. 1974)). The subsequent motion of petitioner for reargument of the motion to dismiss the appeal taken as of right, and for reargument of motion for leave to appeal denied by the Court of Appeals by order dated June 16, 1975 as yet unreported, is found in petitioner's petition at page 15 a entitled Appendix "D".

Jurisdiction

The orders of the New York State Court of Appeals were entered in two separate orders entered February 12, 1975 petitioner's petition 14 a, and the subsequent order

entered June 16, 1975, petitioner's petition 15 a. The petition for writ of certiorari was filed on September 9, 1975. The jurisdiction of this Court is invoked under Rule 19(a) of said Court.

Questions Presented

1. Whether the petitioner had no opportunity to confront his only accuser?

Whether hearsay evidence may be admitted in a disciplinary proceeding?

3. Whether petitioner is required to be represented by counsel at the investigatory stage of a Police Department internal investigation which subsequently develops into a desciplinary proceeding?

4. Whether a report from a police officer to his superior officer was violative of his right to privacy concerning a matter under investigation relating to said police officer?

5. Whether the enforcement Rules & Regulations of the Nassau County Rules & Regulations are vague and ambiguous?

6. Whether a police officer's extramarital relationships are a proper subject for a police disciplinary proceeding?

7. Whether petitioner has presented a substantial constitutional question which is directly involved in his appeal?

Statement of Facts

On September 4, 1973, Daniel A. Grippe (hereinafter petitioner or petitioner Grippe), a sergeant in the Nassau County Police Department, went to see his commanding officer, Inspector DeBeche, Commander of the First Precinct. In the conversation that followed, petitioner Grippe revealed that he had been involved in an extramarital affair for "...the last couple of years..." (R. 184).*Approximately one-half hour after this conversation, the woman with whom petitioner Grippe was involved, a Mrs. Hester Jerome, arrived at the office of Inspector DeBeche. Mrs. Jerome proceeded to explain her illicit relationship with the petitioner (R. 186). Both petitioner and Mrs. Jerome freely volunteered information relating to their affair to Inspector DeBeche.

As a result of the two aforementioned conversations on September 4, 1973 in which both petitioner and his paramour revealed their illicit affair to Inspector DeBeche, and one further conversation on September 5, 1973 in which Mrs. Jerome recounted to Chief Redican, Commanding Officer of the First Division, her relationship with petitioner, Chief Redican was placed in charge of an internal investigation with regard to the alleged conduct of Petitioner. Chief Redican's investigation substantiated the substance of the conversations of September 4th and 5th. The investigation turned up motel registration stubs revealing that petitioner and Mrs. Jerome shared a motel room during a P.B.A. convention, that she accompanied him to Boston in April of 1972 for a sociology convention, and that they took a trip together to Kentucky in August, 1973 to visit Mrs. Jerome's family. (County Exhibits 5A-J, 6A-J, 9, 10 and 11 of the Record).

As part of the investigation, Petitioner Grippe was called to the office of the Chief of District on September

(*R. — Record on Appeal unless otherwise indicated.)

12, 1973. Pursuant to Section 6(b) of the contract between the County of Nassau and the P.B.A., Petitioner had a P.B.A. representative present during his interview. This representative was P.B.A. President, Cliff Schmidt. During the interview, petitioner gave a full and complete report of his relationship with Mrs. Jerome. In his report, petitioner falsely stated that he was being compelled to write the report under threat of losing his job. Petitioner made this statement in spite of the fact that the Nassau County Administrative Code makes clear that only the Commissioner of Police can dismiss an officer, and only after there has been a disciplinary proceeding. At the conclusion of the interview, P.B.A. President Schmidt was asked if there was anything improper during the interview, or if at any time petitioner was threatened with the loss of his job. President Schmidt stated that there was nothing improper in the interview, and that there were no threats, with the exception of a statement to Petitioner that he could be properly suspended, if he didn't write his report. (R. 130-136)

On September 13, 1973, petitioner was served with charges and specifications stating he violated Article IX, Rules 10 and 11, of the Rules and Regulations of the Police Department. The Specifications stated that petitioner (1) acted in a manner unbecoming an officer by carrying on an intimate and illicit relationship with a female other than his wife, and (2) that Petitioner made a false communication in his report when he stated he was being compelled to write the report under threat of losing his job (R. 13a-14a).

From October 2, 1973 to October 5, 1973, a disciplinary hearing was conducted at Nassau County Police Headquarters. Upon the recommendation of the trial commissioner, and after his own study of the case, the Commissioner of Police, Louis J. Frank (hereinafter respondent or respondent Frank) found petitioner guilty of the charges and specifications and ordered him dismissed from the Police Department. It should be pointed out that respondent, in his decision, mentioned petitioner's prior

disciplinary involvement. (R. 17a) On February 7, 1973, Petitioner had been found guilty of, among other charges, making sexual proposals to a 17 year old female, and permitting a female private person to enter a Department vehicle without being so directed, and not on official police business. (R 32a-33a, 36a-38a)

A proceeding was commenced in New York State Supreme Court, Nassau County on November 19, 1973 by the service of a Notice of Petition and Verified Petition with an Answer being served on January 28, 1974. The petitioner requested Article 78 Review of respondent's determination dismissing him. The proceeding was duly transferred to the Appellate Division, Second Department, which affirmed the determination of the Trial Commissioner and the decision of Commissioner Frank. (46 A.D.2d 848, 1974). Motion for leave to appeal was denied by the Court of Appeals (36 N.Y.2d 713, 1975), as was the motion of petitioner for reargument (order dated June 15, 1975 and as yet unreported.)

On September 9, 1975, petitioner filed an application to this Court for a writ of certiorari to review the within proceedings.

POINT I

The failure of Hester I. Jerome to testify at the disciplinary hearing should not require reversal in that no substantial constitutional question is directly involved.

Petitioner contends in page 1 of his petition for a writ of certiorari that "the petitioner had no opportunity to confront his only accuser...". Of course this is not the case, because Hester I. Jerome is not the accuser in the case at bar. In this disciplinary proceeding, the accuser or complainant was Vincent J. Redican, Deputy Chief Inspector of the Nassau County Police Department (see page 9A, 10A Appendix "B").

It is clear from a reading of the record that Daniel A. Grippe's report, as well as other evidence uncovered by the Police Department, resulted in his being found guilty of breach of disciplinary rules and regulations. In essence, petitioner's own report and testimony alone were sufficient to establish guilt. It is no longer conjecture as to whether Mrs. Jerome's testimony was necessary to the respondent's case, because of the insurmountable evidence against petitioner in the record.

The case of *Greene* v. *Mc Elroy*, 360 U.S. 474, 3 L. Ed. 2d 1377, 79 S. Ct. 1400, (1959), which petitioner cites, is distinguishable in that petitioner herein could readily confront and question the Nassau County Police Investigators who took Mrs. Jerome's statement. Reports relevant to the disciplinary hearing were readily available to petitioner. The most glaring and distinguishing characteristic in the instant case as compared to the Greene case, is that petitioner's own report and statements as well as other relevant and material evidence bearing on his conduct and activities ultimately resulted in finding him guilty with respect to the charges made against him.

In any event, petitioner's attorney could have taken steps to properly protect his client in the event petitioner's attorney determined that petitioner required Mrs. Jerome as necessary to his case. This is especially true since counsel for the petitioner insisted that the County produce Mrs. Jerome for confrontation and cross-examination (R. 76). Senior Deputy County Attorney Louis Schultz stated that he was going to have this subpoenaed witness cited for contempt, upon the conclusion of this proceeding if not sooner, to punish Mrs. Jerome for contempt of court (R. 78). At this point in time, petitioner's attorney could have, but did not request the Trial Commissioner to take any additional or further steps to compel Mrs. Jerome's appearance pursuant to Section 2308(b) of the New York Civil Practice Law and Rules with respect to obedience of non-judicial subpoenas.

There were other possible remedies available to petitioner, if he thought it necessary, by instructing his attorney to move in the Supreme Court of the County of Nassau for a stay of all proceedings pending the presence and testimony of Mrs. Jerome, or for an order on good cause shown requiring the Police Commissioner of Nassau County to enforce the previously issued judicial subpoena by application to the Court, as provided in New York CPLR 2308(b), or in the extreme, for a writ of prohibition pursuant to Article 78 of the New York CPLR.

In addition, petitioner through his attorney could have gone to the federal courts to enjoin the pending county disciplinary proceedings, if he determined that extraordinary circumstances required it to protect his client's interests. See: *Younger* v. *Harris*, 401 U.S. 37 (1971), and the companion case of *Younger*, *Samuels* v. *Mackell*, 401 U.S. 66 (1971)

In *McCune* v. *Frank*, U.S. Court of Appeals for the Second Circuit, Docket #75-7027, (1975) and motion by McCune for stay denied by the Honorable Thurgood Marshall, Justice, United States Supreme Court, on September 15, 1975, the Circuit Court stated, at page 4882:

> "That we are dealing with a county police department's disciplinary proceeding rather than a state court action is of little moment. A proceeding in a state court is not a prerequisite to the applicability of *Younger*. *Schlesinger* v. *Councilman, supra; Geiger* v. *Jenkins*, 401 U.S. 985 (1971), *aff'g. mem.*, 316 F. Supp. 370 (N.D. Ga. 1970). *Geiger* establishes that *Younger* has relevance to administrative proceedings, *see Anonymous* v. *Association of the Bar, supra.* F.2d , at n. 3, slip op. 2715 at 2724-25 n.3, and the explanation of *Geiger* in *Gibson* v. *Berryhill*, 411 U.S. 564, 576-77 (1973), indicates that this applicability is subject to considerations similar to those subsequently enunciated in *Huffman, supra*, and *Anonymous* v. *Association of the Bar, supra.*"*

*The citations for the two companion Anonymous Cases and 515 F 2d 427, and 515 F 2d 435, (2d Circuit1975).

In summation, the petitioner pursued none of these adequate remedies at law to protect himself, and therefore it is fair to conclude that he was left to the State courts.

It should also be noted that in administrative hearings such as disciplinary hearings, hearsay testimony is admissible, provided other competent evidence is submitted. Such was the case in the instant proceedings. The following quotation from *Matter of Hecht* v. *Monaghan*, 307 N.Y. 461 (1954) on the informality and the disregarding of technical and legal rules of procedure is well stated.

"The hearing held by an administrative tribunal acting in a judicial or quasi-judicial capacity may be more or less informal. Technical legal rules of evidence and procedure may be disregarded. Nevertheless, no essential element of a fair trial can be dispensed with unless waived. That means, among other things, that the party whose rights are being determined must be fully apprised of the claims of the opposing party and of the evidence to be considered, and must be given the opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal (see *Matter of Friedel* v. *Board of Regents*, 296 N.Y. 347, 352-353; *Matter of Heaney* v. *McGoldrick*, 286 N.Y. 38, 45; *People ex rel. Hirschberg* v. *Board of Supervisors*, 251 N.Y. 156, 172; *Matter of Greenebaum* v. *Bingham*, 201 N.Y. 343, 347; *Morgan* v. *United States*, 304 U.S. 1, 18-19; *West Ohio Gas Co.* v. *Commission* [*No. 1*], 294 U.S. 63, 70-71 *Lloyd Sabaudo Societa* v. *Elting*, 287 U.S. 329, 339-340; *Kwock Jan Fat* v. *White*,, 253 U.S. 454, 463-464; *Interstate Commerce Comm.* v. *Louisville & Nashville R.R.*, 227 U.S. 88, 93-94)."

It is submitted that no substantial constitutional question is directly involved, and the petition for a writ of certiorari should be dismissed.

POINT II

Petitioner had no right to be represented by counsel during the course of an investigation by the Police Commissioner of Nassau County.

The Sixth Amendment to the United States Constitution provides for the assistance of counsel to the accused in all criminal prosecutions, and is subject to the "criminal prosecution" limitation stated in said amendment, and as a result, has no bearing on the question whether there is a right to counsel in administrative proceedings.

It is established that there is no constitutional right to the assistance of counsel at the investigatory stage. *Bowles* v. *Baer*, 142 F.2d 787 (7th Cir. 1944). The Court in *Kirby* v. *Illinois* 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed.2d 411 (1972) stated,:

"In a line of constitutional cases in this Court stemming back to the Court's landmark opinion in Powell v. Alabama, 287 U.S. 45, 77 L.Ed. 158, 53 S.Ct. 55, 84 ALR 527, it has been firmly established that a person's Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him." at 32 L.Ed. 2d 417.

It is clear in the case at bar a right to counsel at the investigatory stage is not authorized by any statute, regulation or specific constitutional provision. In the case of *Re Groban*, 352 U.S. 330, 1 L.Ed.2d 376, 77 S.Ct. 510 (1957), a right to counsel under the due process clause was denied to a witness at a state fire marshal's investigation into the cause of a fire, notwithstanding that the witness was under suspicion. The Supreme Court, in *Re Groban*, concluded that the fact that witnesses at the investigation were under a legal duty to speak, and that their testimony might provide a basis for criminal charges against them, did not

mean that they had a constitutional right to the assistance of counsel; such witnesses, it was pointed out, have the protection of the privilege against self-incrimination and, until evidence obtained in such investigation gives rise to a criminal charge, only the self-incrimination privilege is available.

This rule also finds support in cases involving preliminary examinations in deportation proceedings, *Nason* v. *Immigration and Naturalization Service*, 370 F.2d 856 (2d Cir. 1967), as well as other investigations preliminary in nature. *Anonymous Nos. 6 and 7* v. *Baker*, 360 U.S. 287, 3 L.Ed. 2d 1234, 79 S.Ct. 1157 (1959). See also *Wasson* v. *Trowbridge*, 382 F.2d 807 (2d Cir. 1967); *Madera* v. *Board of Education of the City of New York*, 386 F. 2d 778 (2d Cir. 1967); *United States* v. *Neves*, 269 F.Supp. 158 (S.D.N.Y. 1967).

It therefore appears that petitioner's brief attempts to apply the right to counsel requirements at the hearing stage to the investigation stage. It is submitted that reliance upon those cases which require a right to counsel at a hearing is misplaced in that they do not apply at the investigatory stage of the proceedings. (Particularly here where there was no charge of a crime having been committed).

It is also clear that there is a distinction between an "investigation" and a "hearing" or "adjudication." A provision for "investigation" ordinarily is not a requirement of a "hearing" and constitutional rights in adjudicatory proceedings are inapplicable to the police investigation in the case at bar, because a one-sided investigation does not constitute a hearing. 2 Am.Jur.2d, Administrative Law, §414. The term "hearing" is appropriate to quasi-judicial proceedings, while "investigation" is appropriately used with regard to non-judicial functions of the administrative agency. It is therefore clear that "investigation" is non-adversary and contemplates procedure less formal and more flexible than applies to an administrative hearing.

Petitioner's contention that he was denied his right to counsel during his interview concerning allegations made against him is without merit during an investigatory non-adversary interview on a non-criminal matter. It is also clear that a subsequent disciplinary trial of a police officer is not a criminal proceeding, and the penalties involved would at most result in fines or dismissal from the police force. *Application of Delehanty*, 202 Misc. 22, *aff'd*, 280 App.Div. 542, *aff'd*, 304 N.Y. 725 (1952). Since the disciplinary matter is essentially civil in nature, and since the fruits of the disciplinary interrogation cannot be used in any subsequent criminal action, the rules applicable to having counsel present in criminal actions do not apply at the investigatory stage. There was no criminal charge contemplated or in fact made in this matter.

It should also be noted that petitioner's reliance upon *Miranda* v. *Arizona* 384 U.S. 436 is misplaced. The Court in *Kirby* v. *Illinois cited supra* stated:

> "It follows that the doctrine of *Miranda* v. *Arizona*, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602, 10 ALR 3d 974, has no applicability whatever to the issue before us; for the Miranda decision was based exclusively upon the Fifth and Fourteenth Amendment privilege against compulsory self-incrimination, upon the theroy that custodial *interrogation* is inherently coercive." at 37 L.Ed.2d 416, 417.

In any event the thrust of petitioner's case citations evolve around criminal actions and not administrative disciplinary proceedings.

POINT III

Petitioner, formerly a police officer in the Nassau County Police Department, may properly be made to account for his actions.

The law is clear that a municipal employer has a right to make inquiries of its emloyees as to matters effecting their fitness and suitability for public service, *Gardner* v. *Board of Public Works*, 341 U.S. 716 (1950). Additionally, petitioner's activities, whether on duty or off duty, are a legitimate subject for a disciplinary inquiry concerning a charge of conduct unbecoming an officer. *Parker* v. *Levy*, 417 U.S. 733, 41 L.Ed.2d 439, 94 S.Ct. 2547 (1974); *Fletcher* v. *United States*, 28 Ct. Cl. 173 (1893). In this regard, it should also be pointed out that §8-13.0 of the Nassau County Administrative Code provides that the Commissioner of Police shall have the power to discipline an officer guilty of immoral conduct.

Petitioner alleges that his participation in the interview phase of the internal investigation was improper and unconstitutional. Yet petitioner concedes that the constitutional right to privacy and the right to exercise 5th Amendment rights do not apply to administrative proceedings. *Garrity* v. *New Jersey*, 385 U.S. 493 (1967). Petitioner also ignores the fact that the United States Supreme Court has stated that a police officer must cooperate, and answer questions put to him during an official investigation. *Gardner* v. *Broderick*, 392 U.S. 273 (1968); *Uniformed Sanitation Mens Assoc.* v. *Commissioner of Sanitation of the City of New York*, 392 280 (1968).

It is contended by petitioner that the statement he gave to Chief Redican during the interview should be suppressed because he was not given proper Miranda warnings and that he was forced to incriminate himself. Petitioner's contentions are illogical. Assuming, *arguendo*, petitioner was subject to some criminal liability for his acts, then any statement he gave without the proper Miranda

warnings could not be used against him in any subsequent criminal action. In fact, the law holds that any answers given by a public employee pursuant to a legitimate investigation of his actions cannot be used against him in any subsequent criminal case. *Garrity* v. *New Jersey, supra; Kalkines* v. *United States* 473 F. 2d 1391 (Ct. Cl. 1973); *Confederation of Police* v. *Conlisk*, 489 F.2d 891 (7th Cir. 1973).

Judge Jasen, of the New York Court of Appeals, in his concurring opinion in *Cacchioli* v. *Hoberman*, 31 N.Y.2d 287, 338 N.Y.S.2d 865 (1972), stated:

> "It should be noted that a threat by an employer to do what the employer has the right to do does not constitute fraud or duress. (*Bachorik* v. *Allied Control Co.*, 34 A.D. 2d 940, 942.) Under analogous circumstances involving the involuntary resignation of a corporate officer, the Appellate Division has held: '[The officer's] testimony further demonstrates that the events surrounding his resignation did not contain the elements of wrongful conduct necessary to establish the claims of duress and undue influence. What plaintiff relies upon is the fact that he was told that he would be involuntarily discharged, without severance pay and that this might be disclosed to prospective employers. This can neither be considered a threat, nor false advice, since defendants had the right to discharge plaintiff, who was an employee at will, were not under any duty to continue his salary and were privileged to inform prospective employers of the circumstances surrounding the termination of his employment. A threat to do that which one has the legal right to do does not constitute duress or fraud.

(*Bachorik* v. *Allied Control Co.*, 34 A.D.2d, at p. 942)". 31 N.Y.2d at 291-2."

In addition, the language in *Bachorik* v. *Allied Control Co.*, 34 A.D.2d 940 312 N.Y.S. 2d 272, (1st Dept. 1970), is relevant in that it establishes the flaws and weaknesses in petitioner's "coerced confession" argument. The Court stated, in *Bachorik*:

"His testimony further demonstrates that the events surrounding his resignation did not contain the elements of wrongful conduct necessary to establish the claims of duress and undue influence. What plaintiff relies upon is the fact that he was told that he would be involuntarily discharged, without severance pay and that this might be considered a threat, nor false advice, since defendants had the right to discharge plaintiff, who was an employee at will, were not under any duty to continue his salary and were privileged to inform prospective employers of the circumstances surrounding the termination of his employment. A threat to do that which one has the legal right to do does not constitute duress or fraud. (*Oleet* v. *Pennsylvania Exch. Bank*, 285 App. Div. 411.)" 34 A.D.2d at 942.

The petitioner was not deprived of any constitutional rights herein, inasmuch as what an employer had a right to do does not constitute coercion or duress, nor does it constitute any violation of his constitutional rights in the case at bar.

POINT IV

The Rules and Regulations of the Nassau County Police Department are not vague or ambiguous, and do not fail to indicate proscribed conduct so as to violate the due process clause of the Fourteenth Amendment to the United States Constitution.

A statute or rule which regulates human conduct is unconstitutional if it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926); *Kraus & Bros.* v. *United States*, 327 U.S. 614, 66 S.Ct. 705, 90 L.Ed. 894 (1946).

The rationale for this rule was explained by Justice Frankfurter:

"Fundamental fairness of course requires that people be given notice of what to avoid. If the purpose of a statute is undisclosed, if the legislature's will has not been revealed, it offends reason that punishment should be meted out for conduct which at the time of its commission was not forbidden to the understanding of those who wished to observe the law. The requirement of fair notice that there is a boundary of prohibited conduct not to be overstepped is included in the conception of "due process of law"."*Winters* v. *New York*, 333 U.S. 507 523, 68 S.Ct. 665, 674, 92 L.Ed. 840 (1948) (dissenting opinion).

In *Grayned* v. *City of Rockford*, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 2298-2299, 33 L.Ed.2d 222 (1972), the Court stated:

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist

that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms', it 'operates to inhibit the exercise of [those] freedoms'. Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone"...than if the boundaries of the forbidden areas were clearly marked."

However, a court examining an allegedly vague statute must not restrict its focus to the words of the statute only. The Supreme Court also noted in *Grayned* that a state court's narrowing interpretation of a state statute may supply the required specificity. The Court expanded on this proposition and relied on it in *Parker* v. *Levy*, 417 U.S. 733, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974), which upheld articles 133 and 134 of the Uniform Code of Military Justice, despite their unspecific language, because of the specific content given those provisions by years of judicial gloss supplied "by the United States Court of Military Appeals or by other military authorities". The Court went on to reject the respondent's void-for-vagueness claim on the ground that, because the Articles applied without question to *his* activities, he had no standing "to challenge the vagueness of these Articles as they might be hypothetically applied to the conduct of others." The Court noted that this was not a case involving vagueness "'in the sense that no standard of conduct is specified at all,'" quoting from and distinguishing *Coates* v. *City of Cincinnati*, 402 U.S. 611, 614, 91 S.Ct. 1686, 1688, 29 L.Ed.2d 214 (1971).*

* This, of course, does not mean that a person facing loss of a job does not have as strong a void-for-vagueness arguement as one facing criminal prosecution. *United States Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973).

However, *Parker* v. *Levy*, *supra*, controls disposition of the vagueness challenge here. In the first instance, this is not a First Amendment case. In addition, the vagueness attack should be rejected because the policies underlying the vagueness doctrine do not require its application here, and the Rules and Regulations of the Nassau County Police Department at issue here are not so vague that it specifies no standard at all.

It is also clear that the wording of the aforesaid regulations in question are not so vague that men of common intelligence like petitioner do not know its meaning. As the Supreme Court stated, in *United States Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. at 575-577, 93 S.Ct. at 2897:

"There might be quibbles about the meaning of [certain terms in the regulations,] but there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest. '[T]he general class of offenses to which...[the provisions are] directed is plainly within [their] terms,...[and they] will not be struck down as vague, even though marginal cases couldd be put where doubts might arise.' *United States* v. *Harriss*, 347 U.S. 612, 618, 74 S.Ct. 808, 812, 98 L.Ed. 989 (1954)."

It is therefore submitted that petitioner's vagueness challenge should be rejected, inasmuch as his conduct and his actions were properly the subject of a disciplinary action. In the *Matter of Marri*, 57 Misc. 2d 793 (1968), the New York Court stated:

"A police officer plays a unique role in society. He is the guardian of the public safety and is set up as a model

to be emulated. He must at all times be free to exercise his judgment in performing his duties and can never act in a manner which would tend to destroy the public's confidence in his integrity. *Not only his official conduct, but the manner in which he conducts himself while not on duty reflects upon his integrity and upon his ability to perform his duties.*" (Emphasis supplied.)

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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